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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JAMES LYNN O'HINES,  
12 CDCR #K-86989,  
13 ADC #197067,

Plaintiff,

15 vs.

17 RUIZ, Captain, et al.,

19 Defendants.  
20

Civil No. 08-1336 JM (RBB)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a)  
AND/OR FAILING TO  
MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

21 Plaintiff, an inmate currently incarcerated at the Arizona State Prison Complex in  
22 Florence, Arizona, and proceeding pro se, has filed a civil rights action pursuant to 42  
23 U.S.C. § 1983, among other federal statutes. (*See* Compl. at 1.)

24 **I.**

25 **FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS**

26 All parties instituting any civil action, suit or proceeding in a district court of the  
27 United States, except an application for writ of habeas corpus, must pay a filing fee of  
28 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay

1 this filing fee only if the party is granted leave to proceed *in forma pauperis* (“IFP”)  
2 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th  
3 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

4 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence a civil  
5 action, nor has submitted a Motion to Proceed IFP. Therefore, this case is subject to  
6 immediate dismissal pursuant to 28 U.S.C. § 1914(a).

## 7 II.

### 8 CONCLUSION AND ORDER


9 For the reasons set forth above, the Court hereby:

10 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the  
11 \$350 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and  
12 1915(a); and

13 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is  
14 “Filed” to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a  
15 Motion to proceed IFP which includes a certified copy of his trust account statement for  
16 the 6-month period preceding the filing of his Complaint pursuant to 28 U.S.C.  
17 § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff  
19 with the Court’s approved form “Motion and Declaration in Support of Motion to  
20 Proceed *In Forma Pauperis*.” If Plaintiff fails to either prepay the \$350 civil filing fee  
21 or complete and submit the enclosed Motion to Proceed IFP within that time, this action  
22 shall remain dismissed without prejudice and without further Order of the Court.

23  
24 DATED: August 5, 2008

25   
26 Hon. Jeffrey T. Miller  
27 United States District Judge  
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